

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Chadwick Mills Cole Adams

Case No. 09-80092

Chapter 13

Social Security No. xxx-xx-0161

Address: 56DM Matthews Lane, Broadway, NC 27505

Debtor

AMENDED SECOND MOTION TO MODIFY PLAN

NOW COMES the Debtor, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on January 22, 2009, with the Chapter 13 plan being subsequently confirmed on April 21, 2009
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$630.00 per month.

To: \$630.00 per month through February, 2011, followed thereafter by \$268.00 per month, starting in May 2011.
3. In addition, the Debtor requests a “waiver” to move his Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving these waivers the Debtor agrees that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtor’s case may be dismissed without further hearing by the Court. The Debtor agrees that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
 - A. The Debtor and his wife had a child six (6) months ago, which necessarily caused an increase in monthly household expenses.
 - B. The Debtor’s wife continues to suffer from lupus, kidney stones, and associated medical conditions which are causing daily seizures. Due to her condition and potential for injury, she is prohibited by doctor’s order from working or caring for the

couple's 6 month old child. Accordingly, the Debtor and his spouse are incurring childcare expenses despite the spouse's inability to work.

- C. The Debtor's monthly rent expense has increased from \$310.00 to \$610.00 since the case was filed.
 - D. The Debtor's income at his previous job, which was commission based, declined substantially. To compensate, the Debtor has enlisted with the United States Army at a lower, but more steady, income.
- 5. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.
 - 6. An Amended Schedule J for the Debtor is attached hereto and is incorporated hereto by reference.
 - 7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
 - a. Change in dividend to unsecured creditors.
 - b. Loss of disposable income.
 - c. Increase in expenses due to wife's chronic medical condition and birth of child.

Appended Application for an Additional Attorney Fee

- 8. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
 - a. Calls from and to the Debtor to discuss changes in his situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtor accordingly; and
 - b. Contact with the Trustee's office concerning the proposed modification; and
 - c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
 - d. Drafting this Motion and Certificate of Service; and
 - e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
 - f. Filing of the Motion; and
 - g. Prospective attendance with Debtor at the hearing upon the motion, if any; and
 - h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
 - i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtor.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: April 26, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Koury L. Hicks

John T. Orcutt

North Carolina State Bar No.: 21210

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Chadwick Mills Cole Adams

Case No. 09-80092

Chapter 13

Social Security No. xxx-xx-0161

Address: 56DM Matthews Lane, Broadway, NC 27505

Debtor

CERTIFICATE OF SERVICE

I, Patty Cherigo, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on April 26, 2011 , I served copies of the foregoing **AMENDED SECOND MOTION TO MODIFY PLAN** electronically, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

and by regular first-class U.S. mail, addressed to the following parties:

Chadwick Mills Cole Adams
133 Post Oak Lane
Raeford, NC 27330

All creditors with duly filed claims as listed on the Trustee's website at the addresses listed thereon.

/s Patty Cherigo
Patty Cherigo